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No. 684

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IN

The Supreme Court Of the United States

LANGHORNE CARTER RORER,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

I

Prior Proceedings

This petition of Langhorne Carter Rorer for a writ of certiorari is from the conviction of Rorer in the United States District Court of the Eastern District of Virginia, Alexandria Division.

Rorer and Francis A. Simpson, Jr., were indicted by the Grand Jury, December 1963 term, for seven counts involving gambling, one of which was a conspiracy count; the other counts involved specific acts in the use of interstate facilities for wagering, particularly referring to the 1963 World Series.

On March 17, 1964, the District Judge, after trial, entered judgment of acquittal on three of the counts; the jury returned verdicts of guilty on the four remaining counts. On May 7, 1964, judgment of acquittal was entered on one other count, and a sentence of three years was imposed for the conspiracy count, and two years each on the remaining two counts, to run concurrently.

Thereafter an appeal was noted to the Circuit Court of Appeals for the Fourth Circuit, briefs filed, and argued. On October 12, 1964, the Fourth Circuit entered the following:

"PER CURIAM

> As the record discloses to us no error of substance in the trial, and evidence adequate to sustain the verdict, we affirm.
>
> Affirmed"

II

Langhorne Carter Rorer is presently on bond of $5,000.00.

III

The statutes involved are:

The Fourth Amendment to the United States Constitution.

United States Code: Title 18, Sections 2, 371, 1084, 1952 and 3109.

United States Code: Title 47, Sections 203(a) and (c).

IV

The substance of the offenses is that the defendants were in the business of betting and accepted bets on the 1963 World Series. These bets were made by telephone from Brooklyn, New York, to Fairfax County, Virginia. The bettor lost and reported the matter to the Federal Bureau of Investigation. Partial payment was alleged to have occurred by money order wire and by a trip to Washington, D. C., by the bettor.

V

Designation of record in lower courts.

Affidavit supporting search warrant.

Search warrant for 31 Arcturus Drive.

Indictment.

Motion to quash warrant.

Transcript pages 122, 123, 124, 171, 172, 176, 177.

VI

The question: The trial judge erred in overruling the motion to quash the search warrant, and in admitting the evidence obtained from the home of Rorer at 31 Arcturus Lane, Fairfax County, Virginia.

The United States Circuit Court for the Fourth Circuit erred in finding no error of substance.

Defendant's right to be secure in his home against unreasonable search and seizure, as that right is implemented by Section 3109 of Title 18, United States Code has been ignored.

VII

The question above grows out of the manner in which the search warrant was executed. The statute requires the official executing the search warrant to announce his identity, and when denied entry, permits him to break and enter. The transcript shows from the testimony of the Federal agents on pages indicted above, Item III:

a. That the weather on the day of execution of the warrant was wintery, that the door through which the FBI agents entered had a storm door, and that the windows of the house were closed.

b. That the agents knocked and rang, and waited 15 or 20 seconds, 30 seconds, or one minute, depending on the witness.

c. That the required announcement of identity and authority was insufficient to be heard by an agent seated in a truck 15 to 20 feet away, except that he heard it by radio. The transmission was from a miniature transmitter on the wrist of the agent seeking entry to a receiver in the truck.

The conclusion from the facts outlined above must be that the announcement required was not given in the manner contemplated by the statute, and even if given

properly, the time lapse was too short to give rise to the conclusion that the agents were refused entry.

The spirit and the letter of the statute were violated, and the statute Section 3109, is the ground rule of how the Constitutional right shall be preserved.

IX

The writ of certiorari should be granted;

a. This Court has not spoken directly on this point.

b. The recorded cases have refined the meaning of the statute so that, with some exceptions, the refusal to admit required by the statute is equated with the failure to respond to the door bell within seconds and with a promptness not usual in every day affairs.

c. The opinion of this Court on the point here raised would be invaluable to the bar, the lower courts and law enforcement officers.

LANGHORNE CARTER RORER

By.....
Counsel

DONOVAN, TURNBULL AND BROPHY
106 Little Falls Street
Falls Church, Virginia
Attorneys for Appellant

By.....

I certify that copies of the above have this ..... day of November 1964 been mailed to the Clerk of the Circuit Court of Appeals and counsel of record for the United States.

.....

PHILIP N. BROPHY

APPENDIX

1-A

Transcript pages 122, 123, 124.

CROSS EXAMINATION

BY MR. HEINZ:

Q. Mr. Pfaff, did you go in at the same time that the other Agent went in?

A. I don't know who the other Agent was.

Q. How many of you went to this house, how many Agents?

A. Approximately eight, sir.

Q. Approximately eight Agents?

A. Right, sir.

Q. Who lead the eight in?

A. I guess there were four of us that went in approximately the same time, four or five.

Q. Is that the first four, second four or the . . .

A. We would be the first four or first five that went in.

Q. Who had the search warrant with them?

A. I believe Agent Nichols at the time.

Q. Agent Nichols?

A. Right.

Q. Were you present when he went in?

A. I was, sir.

Q. Right with him?

A. Right behind him, sir.

Q. Did you open the door and walk in?

A. No, sir. The door had to be broken down.

Q. The door had to be broken down?

A. Forced open, yes, sir.

Q. How long were you all out there?

A. Not more than fifteen or twenty seconds I would say.

Q. Before you broke the door down?

A. You mean out . . .

Q. Knocking on the door.

A. It was over thirty seconds, close to . . .

Q. You waited thirty seconds before you broke the door down?

A. Yes, sir.

Q. Did anyone identify themselves?

A. Yes, sir.

Q. Where was the identification made, outside or inside?

A. At the time the identification was made and the words were said, "F.B.I . . . I have a search warrant and a warrant of arrest," I was in a truck parked inside with a radio contact with the two men who were at the door.

Q. Where was this truck located?

A. In the driveway approximately fifteen or twenty feet from the front door of the house.

Q. You don't know whether they said, "This is the F.B.I.," or not do you?

A. I heard it on the radio, yes, sir.

Q. You heard it on the radio?

A. Yes, sir.

Q. How sensitive is that radio?

A. Quite sensitive. It was a hand pack type radio, and he could talk right into it and I was on the other radio in the truck.

Q. But that doesn't necessarily follow because you heard it he said it lound enough for someone inside to hear it, does it?

A. I wouldn't know, sir. I was listening to the radio.

MR. HEINZ: Your Honor, in view of this testimony they waited only thirty seconds before they broke the door down, I certainly think this was an unlawful search and seizure.

THE COURT: Objection overruled.

Transcript pages 171, 172.

Q. You don't know how many were on the raid with you?

A. I don't know how many other Agents were on the raid. In the vehicle I was in I believe there were six.

Q. Six. Who was the chief of the raid?

A. Special Agent in Charge of the Richmond Office, Mr. Brown.

Q. Mr. Brown. How long when you arrived there what did you do, knock on the door?

A. Knocked on the door, rang the door bell.

Q. And then immediately broke it down?

A. No, we didn't.

Q. How long would you say you waited before you broke it down?

A. I would say at least one minute.

Q. What?

A. After ringing the door bell and announcing and also knocking on the door.

Q. What did you announce?

A. At ten second intervals, I believe three ten second intervals, and then through radio transmission we called the other Agents.

Q. Three ten seconds?

A. I say after that we called the other Agents still in the vehicle I arrived in.

Q. Is that when you broke the door down?

A. After the other Agents arrived from the vehicle.

Q. When you announced, what did you announce?

A. Announced that we were Special Agents of the Federal Bureau of Investigation, that we had arrest warrant and search warrant.

Q. For what purpose?

A. Beg pardon?

Q. Did you just say you had arrest warrant and search warrant? Is that all you said?

A. Arrest warrant and search warrant, yes.

Q. Now, what part of the house did you go to after you gained admission?

A. Down to the basement.

Transcript page 176, 177.

Q. Now, how loud did you say, "This is the F.B.I." when you were trying to gain entrance to the place.

A. Repeat that.

Q. How loud did you say, "This is the F.B.I."?

A. Do you want me to demonstrate?

Q. Yes. I think it would be in order.

A. "This is the F.B.I. We have a search warrant and arrest warrant."

Q. Now, the door was closed, the windows were closed. Was there a storm door on the door?

A. Yes, sir, there was.

Q. There was?

A. Yes.

Q. Storm windows on the windows?

A. Right, sir.

Q. And who did you first see when you went into this place?

A. Mr. Rorer down in the basement.

Q. You didn't see anybody upstairs?

A. No.

Q. Who else did you say was there besides Mr. Rorer?

A. You mean down in the basement?

Q. No. In the house.

A. Who else did I say?

Q. Yes.

A. I said Special Agent Crowder, and Special Agent Lardner of the F.B.I.

Q. I said besides Mr. Rorer in this home, who else was there?

A. Yes. Subsequently I saw a colored woman, negro woman.

Q. Where was she?

A. The first time I saw her?

Q. Yes.

A. The first time I saw her was in the recreation room downstairs.

Q. Where had she been? Do you know?

A. I didn't ask her. I didn't talk to her.

Q. Did one of the Agents bring her down?

A. I don't recall.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9496

United States of America,
Appellee,
versus
Langhorne Carter Rorer and Francis A. Simpson, Jr.,
Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA.
OREN R. LEWIS, DISTRICT JUDGE.

(Argued October 7, 1964. Decided October 12, 1964.)

Before BRYAN and BELL, Circuit Judges, and GORDON, District Judge.

James Heinz for Appellant Simpson, James P. Davenport for both Appellants, and John A. K. Donovan (Donovan, Turnbull and Brophy on brief) for Appellant Rorer, and Plato Cacheris, Assistant United States Attorney, (C. V. Spratley, Jr., United States Attorney, and Edward T. Joyce, Attorney, Department of Justice, on brief) for Appellee.

PER CURIAM:

As the record discloses to us no error of substance in the trial, and evidence adequate to sustain the verdict we affirm.

Affirmed.